
OLR Bill Analysis

sSB 1009

AN ACT CREATING THE OFFICE OF GOVERNMENTAL ACCOUNTABILITY.

SUMMARY:

This bill dissolves the Office of State Ethics (OSE), establishes an Office of Governmental Accountability (OGA) as its successor, and makes the new agency responsible for most state so-called “watchdog functions.” To accomplish this, the bill eliminates the independent agency status of the following and places them within OGA:

1. the Freedom of Information Commission (FOIC),
2. the State Contracting Standards Board (SCSB),
3. the State Elections Enforcement Commission (SEEC), and
4. the Judicial Review Council (JRC).

The bill generally maintains existing law’s procedures applicable to these agencies, but it makes OGA responsible for administering them. Under the bill, OGA (1) administers and enforces the codes of state ethics, freedom of information requirements, and campaign and election law requirements; (2) oversees state contracting and procurement processes; and (3) resolves complaints regarding state judges, family support magistrates, and workers’ compensation commissioners.

OGA also assumes each agency’s responsibility for (1) adopting regulations and (2) reporting annually to the governor and General Assembly.

The bill makes several conforming and technical changes.

EFFECTIVE DATE: July 1, 2011, except for the change to the SCSB’s

authority to review and terminate contracts or a state contracting agency's authority to enter into contracts, which is effective October 1, 2011 (that provision's effective date under current law).

§§ 1-2 & 19 — STRUCTURE AND COMPOSITION

OGA consists of an executive director and a (1) legal affairs and enforcement division, (2) public affairs and services division, and (3) business operations division.

Executive Director

The bill makes OGA's executive director a "department head" whom the governor appoints and is subject to the legislative confirmation, qualification requirements, and power and duties provisions that come with that designation (see BACKGROUND). The bill eliminates the executive directors of the OSE, FOIC, SCSB, SEEC, and JRS as designated department heads. OGA's executive director assumes most of their duties and responsibilities.

Under current law, the governor does not appoint the executive director of the dissolving agencies with the exception of the SCSB's executive director who is also subject to the legislative confirmation process.

OGA's executive director is authorized to enter contracts, subject to the attorney general's approval, and apply for and accept non-state funding.

Staff

The bill eliminates four of the five agencies' authority to employ staff. Unlike the other agencies, the SCSB may employ staff and also contract with consultants.

The bill transfers staff from these agencies to OGA, with certain exceptions. In addition, the bill authorizes OGA's executive director to employ staff within available appropriations. It specifies that any employees whom the executive director hires are in classified state service. As noted above, the bill eliminates the five executive director positions. It also eliminates the (1) OSE's general counsel, (2) OSE's

ethics enforcement officer, and (3) SCSB's chief procurement officer.

§§ 4, 19 & 29 — EMPLOYMENT RESTRICTIONS

The bill maintains current law's employment restrictions to which certain employees in the consolidated agencies are subject, and extends them to all OGA employees. For example, it:

1. requires OGA employees and Citizen Ethics Advisory Board (CEAB) members to adhere to a code of ethics (currently applies to OSE staff and board members);
2. prohibits OGA employees and CEAB members from making political contributions to anyone subject to the Code of Ethics (currently applies to OSE staff and board members);
3. prohibits OGA employees within the public affairs and services division from holding another state or municipal position (currently applies to SCSB employees);
4. requires OGA employees within the public affairs and services division to file an annual statement of financial interest (currently applies to SCSB employees); and
5. prohibits OGA employees from being (a) an elected public official, (b) a political party officer, (c) a candidate in any primary or election, or (d) an officer of a state or town committee, candidate committee, or political committee, known as a PAC (currently applies to SEEC employees).

DUTIES AND RESPONSIBILITIES

The bill transfers the personnel powers, duties, obligations, and other government functions from the OSE, FOIC, SCSB, SEEC, and JRC to OGA beginning July 1, 2011. Toward that end, it specifies duties and responsibilities for the executive director and each of the three divisions.

The legal affairs and enforcement division assumes certain duties for which the OSE's CEAB, JRC, and SEEC currently have

responsibility. Specifically, the bill requires the division to (1) investigate complaints, (2) provide advisory opinions, and (3) provide staff assistance.

The bill requires the public affairs and services division to (1) assume responsibility for contract management; (2) provide staff support to the SCSB; and (3) provide education on the (a) state Code of Ethics for Public Officials and Code of Ethics for Lobbyists, (b) Freedom of Information Act (FOIA), (c) procurement practices and codes, (d) campaign finance disclosures, and (e) the Citizens' Election Program.

Finally, the bill makes the business operations division responsible for OGA's administrative and business functions.

§ 1 — Regulations

The bill eliminates the agencies' authority to adopt regulations, including the requirement for SCSB rules of procedure, and instead requires them to recommend to OGA regulations concerning their jurisdiction areas. OGA must adopt regulations to effectuate the bill's provisions and carry out the agencies' functions, though the bill does not specify a date by which OGA must do so.

§ 1 — Reporting

The bill also eliminates the agencies' annual reporting requirements. Instead, it requires OGA's executive director to submit a comprehensive annual report to the governor and General Assembly concerning OGA's activities, recommendations, and accomplishments.

§§ 3-15 & 34-35 — State Ethics

The bill dissolves the OSE, establishes OGA as its successor, and makes the new agency responsible for ethics oversight and administration. The CEAB remains within OGA's legal affairs and enforcement division, with its existing membership criteria (appointed by the same appointing authorities) and most of its powers and duties. It loses the authority to adopt regulations, including lobbyist reporting requirements.

Generally OGA, rather than the OSE, is responsible for:

1. receiving and investigating allegations of ethics violations;
2. providing legal advice;
3. administering ethics training for public officials, state employees, and lobbyists; and
4. overseeing lobbyist registration and financial reporting.

Specifically, the legal unit within the legal affairs and enforcement division assumes those responsibilities for which the OSE's legal division, including the general counsel, is currently responsible. The bill eliminates the general counsel position and, among other things, requires OGA's legal unit to provide (1) the CEAB with legal advice on matters before it and (2) ethics advice, including advisory opinions, to individuals subject to the codes and the general public.

The enforcement unit within the legal affairs and enforcement division assumes those responsibilities for which the OSE's enforcement division, including the ethics enforcement officer, is currently responsible. The bill eliminates the ethics enforcement officer position and makes OGA's enforcement unit responsible for investigating ethics complaints brought to or by the CEAB. It thus give OGA the power to hold hearings, administer oaths, subpoena examine witnesses, and receive evidence. Existing law, unchanged by the bill, requires judge trial referees to preside over ethics hearings and make probable cause determinations.

The public affairs and services division is responsible for providing education on the ethics codes.

§§ 16-18 & 35 — *Freedom of Information*

The bill places the FOIC in OGA and makes the new agency responsible for FOIA oversight and administration. Generally the OGA, rather than the FOIC, is responsible for:

1. ensuring that the public has access to government records and

notice of public meetings;

2. reviewing complaints about alleged FOIA violations; and
3. conducting training sessions for public officials; and
4. creating, publishing, and providing municipal officials with a model ordinance on establishing municipal FOI advisory boards (for this, the bill includes a deadline that is already past).

Specifically, the legal affairs and enforcement division assumes responsibility for the commission's investigative and enforcement duties. The division may, among other things, investigate complaints, hold hearings, administer oaths, examine witnesses, receive oral and documentary evidence, and subpoena witnesses.

The public affairs and services division assumes responsibility for education on FOIA.

§§ 19-28 & 34 — State Contracting

The bill places the SCSB within the public affairs and services division of the OGA and specifies that it remains an independent body. Toward that end, the bill transfers certain authorities and responsibilities from the SCSB to OGA, but leaves others with the board. Specifically, OGA's public affairs and services division assumes responsibility for (1) assisting state agencies with contract compliance; (2) training and overseeing state agency procurement officers; and (3) beginning January 1, 2010, reviewing and certifying state contracting agencies' procurement processes.

The SCSB retains responsibility for (1) auditing state contracting agencies and (2) making recommendations concerning state contracting legislation and information systems. In addition, the bill requires the SCSB to approve the state agency procurement guide, which OGA develops. Current law requires the board to develop the guide.

OGA and its executive director generally assume the duties and

responsibilities of the SCSB's chief procurement officer, whom the bill eliminates. OGA, rather than the chief procurement officer, is responsible for reviewing and monitoring state contracting agencies' procurement processes and compliance. OGA's executive director, rather than the procurement officer, serves as chairperson of the SCSB's Contracting Standards Advisory Council.

In addition, the bill replaces the SCSB's executive director with the OGA's executive director as an ex-officio, nonvoting board member. It thus makes OGA's executive director solely responsible for:

1. preparing a comprehensive plan of the board's administrative functions,
2. coordinating the board's budget and personnel activities,
3. providing for an examination of the board's administrative organization to promote economy and efficiency,
4. acting as the board's external liaison, and
5. performing any other duties the chairperson or board assigns, as appropriate.

Under current law, the SCSB's executive director, in consultation with the chief procurement officer, has these responsibilities.

The bill also eliminates the requirement that the SCSB issue copies of its decisions concerning appeals from contractors, bidders, or proposers on contract suspension decisions to the (1) parties, (2) state contracting agency's department head, and (3) chief procurement officer.

§§ 29-30 & 35 — Elections and Campaign Finance

The bill places the SEEC within OGA and transfers some, but not all, of the commission's authority. Under the bill, the OGA, rather than the SEEC, has the power to:

1. investigate complaints or alleged violations of specified election

- and campaign finance laws;
- 2. inspect or audit campaign finance statements or records;
- 3. attempt to secure voluntary compliance with election and campaign finance laws;
- 4. enter into contracts to discharge its duties;
- 5. provide the secretary of the state with copies of the commission's decisions; and
- 6. report to the governor and General Assembly annually on its activities with respect to investigations and the disposition of complaints, other matters within its jurisdiction, and recommendations for legislative changes.

The bill also requires OGA to assist the SEEC with its remaining duties and powers. Specifically, the SEEC retains the authority to:

- 1. levy civil penalties against individuals who violate campaign finance or election law;
- 2. issue orders, including cease and desist orders;
- 3. refer evidence to the chief state's attorney or attorney general; and
- 4. receive and determine complaints made under the Help America Vote Act.

The bill designates both the OGA executive director and the SEEC as the law enforcement agency for investigations of possible criminal election law violations for certain purposes under FOIA.

OGA's legal affairs and enforcement division assumes responsibility for investigating election and campaign finance complaints and providing advisory opinions. The public affairs and services division manages the commission's campaign finance disclosure duties and the Citizens' Election Program.

§§ 31-32 — Judicial Review

The bill places the JRC in OGA's legal affairs and enforcement division and transfers the duties of the council's executive director to OGAs' executive director. It thus requires the legal affairs and enforcement division, rather than the JRC, to investigate complaints against judges, workers' compensation commissioners, and family support magistrates.

BACKGROUND***Department Heads***

By law, department heads serve at the pleasure of the governor, but not longer than four years from March 1 in the year of appointment, unless reappointed. The governor must make the nominations for all department heads by February 1 of the first year of the gubernatorial term. A nomination may be made to either chamber of the General Assembly. That chamber has sole responsibility for confirming the nomination.

The law requires department heads to be qualified by training and experience for the duties of their office. They must act as the governor's executive officer to accomplish their department's purposes. They must plan comprehensively and coordinate their agencies' programs, organize their agency to promote economy and efficiency, and designate deputies to act on their behalf when absent. They may abolish, transfer, or consolidate the parts of the agency; make regulations; enter into contracts; receive money, revenue, or services from the federal government, corporations, associations, or individuals; and create advisory boards.

They must devote their full time to their duties with the department and may not engage in any other gainful employment (CGS §§ 4-5 to 4-8).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 12 Nay 2 (03/23/2011)